IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

STATE OF LOUISIANA

-VERSUS-

WILLIE J. DANIEL

APPEAL FROM THE SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

ROY L. WOOD
Attorney for Appellant
P. O. Box 715
Amite, Louisiana 70422

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I. INTRODUCTION

This is an appeal from the final judgment of the Supreme Court of Louisiana of July 16, 1974 affirming the judgment of conviction and sentence of the appellant for the crime of armed robbery.

II. OPINION BELOW

The opinion of the Supreme Court of Louisiana is reported at 297 So. 2d 417 (1974). (See Appendix A)

III. JURISDICTION

Willie J. Daniel was tried before a jury of the 22nd Judicial District Court for the Parish of St. Tammany on a charge of armed robbery (La. R.S. 14:64). On July 16, 1974 the Supreme Court of Louisiana entered a final judgment affirming the judgment of conviction and sentence of the appellant. On September 26, 1974 the appellant filed a Notice of Appeal to the United States Supreme Court with the Clerk of the Louisiana Supreme Court.

This appeal is taken pursuant to 28 U.S.C. § 1257(2). In the trial court the defendant moved to quash the petit jury venire on the grounds that the provisions of Louisiana law (La. Const. Art. 7 § 41 (1921) and Louisiana Code of Criminal Procedure Article 402) which provide an exemption from jury service for members of the female sex unless they file a written declaration indicating a desire to be subject to such service, violate the defendant's rights to Due Process of Law as guaranteed by the United States Constitution. The trial court overruled the motion to quash and the Supreme Court of Louisiana affirmed. Cases believed to sustain the jurisdiction are as follows:

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Frontiero v. Richardson, 93 S. Ct. 1764 (1973); State of Louisiana v. Billy J. Taylor, No. 73-5744; and State of Louisiana v. Healy, No. 73-759.

IV. STATE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

La. Const. Art. 7 § 41 (1921):

> "The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service."

La. Code of Criminal Procedure Art. 402:

> "A woman shall not be selected for jury service unless she has previously filed with the clerk of court, of the parish in which she resides, a written declaration of her desire to be subject to jury service."

V. QUESTIONS PRESENTED

A. Whether La. Const. Art. 7 § 41 and La. Code of Criminal Procedure Art. 402 in providing an automatic exemption for all women from jury service violate the Sixth and Fourteenth Amendments of the United States Constitution?

B. Whether the appellant, a male, has been deprived of an impartial jury and fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution by reason of the systematic exclusion of women from the jury selection process governed by La. Const. Art. 7 § 41 and La. Code of Criminal Procedure Art. 402?

VI. STATEMENT OF THE CASE

The appellant, a male, was convicted of armed robbery on November 20, 1973 by a jury in St. Tammany Parish. He was sentenced to serve sixty (60) years.

A motion to quash the petit jury venire was filed in the trial court on the grounds that woman jurors were systematically excluded from the petit jury and that this violated the appellant's rights as guaranteed by the United States Constitution. The motion was denied and on appeal the same objection was urged by bill of exception. The Louisiana Supreme Court affirmed the conviction.

In its opinion, the Louisiana Supreme Court stated:

> "Defendant alleges that the lower court committed error by overruling the defendant's Motion to Quash the petit jury venire on the ground that women were systematically excluded from the jury. See LSA-Const. Art. 7, § 41; LSA-C. Cr. P. Art. 402. Relying upon the decisions of the United States Supreme Court in Hoyt v. Florida, 368 U.S. 57, 82 S. Ct. 159, 7 L.Ed. 2d 118 (1961), this Court has often held that the jury selection method here attacked is valid. See State v. Davis, La., 284 So. 2d 896 (1973); State v. Womack, La., 283 So. 2d 708 (1973), and the cases therein cited. We adhere to these holdings until the United States Court has again spoken on the subject.
>
> "This Bill is without merit."

VII. THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

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A.

This appeal raises the question whether the trial of a male defendant by a jury from which women were intentionally and arbitrarily excluded is in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

In analogous situations on a claim of exclusion of a class from jury

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VII. THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

A.

This appeal raises the question whether the trial of a male defendant by a jury from which women were intentionally and arbitrarily excluded is in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

In analogous situations on a claim of exclusion of a class from jury service, this Court has held that substantial Federal questions are raised.

Strauder v. West Virginia, 100 U.S. 303 (1879); Hernandez v. Texas, 347 U.S. 475 (1954); Smith v. Texas, 311 U.S. 128 (1940); Cassell v. Texas, 339 U.S. 282 (1950); Peters v. Kiff, 92 S. Ct. 2163 (1972).

B.

The precedents established by this Court not only do not support the decision of the Supreme Court of Louisiana, but require its reversal. In Peters v. Kiff, supra, this Court stated at p. 2167-2169:

> "Moreover, the Court has also recognized that the exclusion of a discernable class from jury service injures not only those defendants who belong to the excluded class, but other defendants as well, in that it destroys the possibility that the jury will reflect a representative cross-section of the community.... These principles compel the conclusion that a state cannot, consistent with Due Process, subject a defendant to indictment or trial by a jury that has been selected in an arbitrary and discriminatory manner, in violation of the Constitution and laws of the United States. Illegal and unconstitutional jury selection procedures cast doubt on the integrity of the whole judicial process. They create the appearance of bias in the decision of individual cases, and they increase the risk of actual bias as well.... But the exclusion from jury service of a substantial and identifiable class of citizens has a potential impact that is too subtle and too pervasive to admit of confinement to particular issues or particular cases.... When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable."

C.

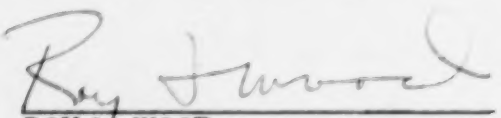
The legal and factual considerations which in 1961 prompted the Court in Hoyt v. Florida, supra, to uphold a similar statute are no longer relevant. Reed v. Reed, 92 S. Ct. 251 (1971) and Frontiero v. Richardson, 93 S. Ct. 1764 (1973).

This case is of far-reaching significance and importance. The Supreme Court of Louisiana purportedly following decisions of this Court, has held that the Due Process clause of the Fourteenth Amendment does not prohibit the intentional exclusion of women from the petit jury. The appellant respectfully submits that this does "violence to the democratic nature of the jury system." Healy v. Edwards, 363 F. Supp. 1110 (E.D. La. 1973).

VIII. CONCLUSION

The questions presented by this appeal are substantial and of broad public importance. Probable jurisdiction should therefore be noted.

RESPECTFULLY SUBMITTED:



ROY L. WOOD
P. O. Box 715
Amite, Louisiana 70422
(504) 748-2601

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, Appellant, and a member of the Bar of the United States Supreme Court, hereby certify that I have mailed, postage prepaid, first class mail, a copy of the foregoing Jurisdictional Statement to the United States Supreme Court, to Mr. Julian A. Rodrigue, Assistant District Attorney for the Parish of St. Tammany, by mailing same to his office, and to William J. Guste, Jr., Attorney General

of the State of Louisiana, by mailing at his office in the State Capitol Building, Baton Rouge, Louisiana. I further certify that all parties required to be served have been served.

Amite, Louisiana, this 30th day of September, 1974.

Roy L. Wood

ROY L. WOOD

APPENDIX A

SUPREME COURT OF LOUISIANA

OFFICE OF CLERK

301 Loyola Ave.
Room No. 220
New Orleans, Louisiana 70112

Dear Sir:

Attached you will find copy of opinion in a case which you handled.

The judgment in this case will become final at the expiration of fourteen (14) days from the date appearing on the first page of the opinion, in conformity with the provisions of Section 1 of Rule IX of the Supreme Court, as revised and amended January 1, 1974, unless application for rehearing reaches this office and is filed within the delay provided.

Cordially yours,

Harold A. Moïse, Jr.
Clerk.

STATE OF LOUISIANA

NO. 54,607

V.

SUPREME COURT OF LOUISIANA

WILLIE J. DANIEL

APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY, HONORABLE WALLACE A. EDWARDS, JUDGE.

SANDERS, Chief Justice.

Defendant, Willie J. Daniel, was charged with armed robbery. On November 20, 1973, after a jury trial, he was convicted and sentenced to imprisonment for 60 years. Defendant now appeals. Bills of Exceptions Nos.4 and 5 were neither argued nor briefed by defendant; therefore, they are deemed abandoned. State v. Edwards, 261 La.1014, 261 So.2d 649 (1972). In this Court, defendant relies upon Bills of Exceptions Nos. 1, 2, and 3.

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BILL OF EXCEPTIONS NO.1

Defendant alleges that the lower court committed error by overruling the defendant's Motion to Quash the petit jury venire

NO. 54,607

V.

SUPREME COURT OF LOUISIANA

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BILL OF EXCEPTIONS NO.1

Defendant alleges that the lower court committed error by overruling the defendant's Motion to Quash the petit jury venire on the ground that women were systematically excluded from the jury.

Barham, J. concurs.

See LSA-Con .Art.7, §41; LSA-C.Cr.P.Art.402. Relying upon the decisions of the United States Supreme Court in Hoyt v. Florida, 368 U.S.57, 82 S.Ct.159, 7 L.Ed.2d 118 (1961), this Court has often held that the jury selection method here attacked is valid. See State v. Davis, La., 284 So.2d 896 (1973); State v. Womack, La., 283 So.2d 708 (1973), and the cases therein cited. We adhere to these holdings until the United States Court has again spoken on the subject.

This Bill is without merit.

BILL OF EXCEPTIONS NO.2

In this Bill, defendant alleges that the lower court committed error by compelling him, over his objection, to wear handcuffs throughout his trial.

Defense counsel moved to have defendant's handcuffs removed; the State objected, and the court heard evidence as to the need for manacles. Captain Wallace Laird, Chief Criminal Deputy of St. Tammany Parish, testified that, while defendant was confined in the parish jail awaiting trial, he was involved in the following custodial offenses: 1) destroying the fixtures in a cell, October 1972; 2) crime against nature in his prison cell, February 1973; 3) simple escape, the bars of his cell having been sawed, June 1973; and 4) attempted simple escape, after locking two jailers in a cell, August 1973. Captain Laird further testified that he thought that, in addition to handcuffs, defendant should have a chain around his waist to prevent him from raising his arms.

The conduct of the trial, including the use of manacles, is within the sound discretion of the trial judge. State v. Tennant, 262 La.

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The conduct of the trial, including the use of manacles, is within the sound discretion of the trial judge. State v. Tennant, 262 La. 941, 265 So.2d 230 (1972); McCloskey v. Boslow, 349 F.2d 119

(4th Cir. 1965). In light of the defendant's violent history, we find no abuse of discretion on the part of the trial judge in requiring defendant to wear handcuffs.

This Bill is without merit.

BILLS OF EXCEPTIONS NO.3

In this Bill, defendant contends that the lower court erred in overruling his objection to the pre-trial line-up and all identification testimony concerning the line-up because defendant was not afforded the right to counsel at the line-up. The line-up took place during the investigative period before counsel was appointed and before the prosecution had been initiated by the filing of the Bill of Information. Under these circumstances, there is no constitutional requirement that an attorney for the defendant be present at the line-up. Kirby v. Illinois, 406 U.S.682, 92 S.Ct.1877, 32 L.Ed.2d 411 (1972), and cases cited therein. We find nothing in the record which indicates that defendant's rights were violated.

Hence, this Bill is without merit.

For the reasons assigned, the conviction and sentence are affirmed.

SUPREME COURT OF THE STATE OF LOUISIANA

Clerk's Office, New Orleans, July 16, 19 74.

Dear Sir:

No rehearing was applied for in the case listed below and the said case is now final.

State v. Daniel

No. 54,607

Yours very sincerely,

Harold A. Moïse, Jr.

APPENDIX C

STATE OF LOUISIANA

VS. NO. 54,607

SUPREME COURT OF LOUISIANA

WILLIE J. DANIEL

NOTICE OF APPEAL

Notice is hereby given that Willie J. Daniel the defendant-appeallant, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Louisiana of July 16, 1974, affirming the judgment of conviction, entered on November 20, 1973.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

S/ Roy L. Wood

Roy L. Wood
Attorney for Willie J. Daniel
P.O. 715
Amite, Louisiana

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOtice of Appeal has been mailed to Mr. Julian J. Rodrigue, Assistant District Attorney, Covington, Louisiana, this 26th day of September, 1974, via U.S. Mail, postage pre-paid.

Notice is hereby given that Willie J. Daniel the defendant-appeallant, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Louisiana of July 16, 1974, affirming the judgment of conviction, entered on November 20, 1973.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

S/ Roy L. Wood

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Attorney for Willie J. Daniel
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S/ Roy L. Wood

Roy L. Wood

STATE OF LOUISIANA	*	NUMBER 54,607
VERSUS	*	SUPREME COURT
WILLIE J. DANIEL	*	STATE OF LOUISIANA

PROOF OF SERVICE

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Amite, Louisiana, this 30th day of September, 1974.

Roy L. Wood

ROY L. WOOD